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Chairman: Mr. Tulbure ..... (Moldova)

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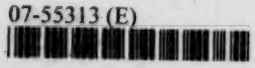

The meeting was called to order at 10 a.m.

Agenda item 83: Diplomatic protection (A/62/118 and Add.1)

1. **Mr. Adsett** (Canada), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that a large body of well-established State practice already existed with regard to much of the subject matter covered by the draft articles on diplomatic protection (A/61/10). Customary international law dealt extensively with the topic which had evolved as a result of State practice and the decisions of international courts and tribunals. While, in some cases, the modifications made by the International Law Commission to the preliminary drafts of the articles accurately reflected customary international law, in others they amounted to the progressive development of the law.

2. The CANZ group of countries, unlike some other States, was of the opinion that the concept of predominant nationality set out in draft article 7 did nothing to alter States' primary legal obligation to inform foreign nationals of their right to consular assistance.

3. It would be inadvisable to try to adopt a legally binding instrument on the topic at the current juncture. The draft articles, which had been drawn up within a very short time, might have far-reaching implications for Governments. Any attempt to elaborate a convention might therefore reopen the debate on the draft articles and quickly undermine the Commission's achievements in consolidating the topic. The value of the Commission's deliberations would be demonstrated over time as State practice evolved under the guidance of the Commission's work.

4. **Mr. Eriksen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the draft articles on diplomatic protection were generally satisfactory, inasmuch as they struck a good balance between the codification and progressive development of international law in that field.

5. The General Assembly should therefore follow the International Law Commission's recommendation and adopt the draft articles in the form of a convention within a relatively short period of time, for the sake of greater legal clarity and predictability. Referring to the diverging views set out in the Secretary-General's report (A/62/118 and Add.1), he expressed the Nordic countries' readiness to consider any option which safeguarded the core elements of the draft articles.

6. **Mr. Serradas Tavares** (Portugal) said that the draft articles on diplomatic protection adopted by the International Law Commission were suitable material for an international convention, notwithstanding the disagreement his Government had voiced in earlier debates in the Sixth Committee with regard to the scope of the draft articles and the contents of draft articles 8, 11 and 12. An ad hoc committee should be set up within the Sixth Committee to discuss the subject matter in greater depth and to elaborate an international convention on diplomatic protection on the basis of the draft articles.

7. He hoped that two parallel conventions would be drawn up, one on diplomatic protection, the other on State responsibility for internationally wrongful acts, because the two topics traditionally went hand in hand. The adoption of twin conventions would consequently represent a major step towards the consolidation of the law on international responsibility.

8. **Ms. Allen** (Cuba) said that the draft articles on diplomatic protection were extremely valuable because they contributed to the codification and progressive development of international law by combining rules of customary international law with new norms which were not yet applied in a uniform manner.

9. The right established in draft article 1, namely that of a State to invoke, through diplomatic action or other means of peaceful settlement, the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that was a national of the State invoking responsibility, constituted a guarantee that States would fulfil their international obligations with respect to the rights of foreign natural or legal persons present in their territory and would help to prevent the violation of those persons' rights. Diplomatic protection represented a substantial advance in the protection of the human rights and fundamental freedoms flowing from international law, especially since the draft articles extended the application of such protection to refugees and stateless persons.

10. The draft articles on diplomatic protection were closely linked to those on the responsibility of States for internationally wrongful acts because the purpose of diplomatic protection was to defend the rights of

persons against a foreign State's wrongful act, as defined in the draft articles on State responsibility. That was why they were of equal importance as means of contributing to greater compliance with international law.

11. Her Government was in favour of drafting a convention based on the draft articles on diplomatic protection, for that would help to clarify norms, update international law and codify generally accepted practice stemming from the case law of the International Court of Justice and State practice. Nevertheless, in order to arrive at a broad consensus, it would be advisable to consider the draft articles in a working group within the framework of the Sixth Committee which could finalize the details and polish the text.

12. **Ms. Valenzuela Díaz** (El Salvador) said that the topic of diplomatic protection had to be seen in the wider context of the responsibility of States for internationally wrongful acts and that was why the same course of action should be taken on both sets of draft articles.

13. The International Law Commission's amendments to the preliminary versions of the draft articles had brought the latter more closely into line with customary international law, although some draft articles, especially draft article 8 concerning the diplomatic protection of stateless persons and refugees, constituted progressive development. Despite the fact that the commentaries clearly showed that there was a considerable body of established State practice on most of the questions covered by the draft articles, more time for their analysis and consideration was required before the adoption of a draft convention based on them. Additional reflection on the text would make for a better outcome and, for that reason, she recommended that the subject should be kept on the General Assembly's agenda.

14. **Ms. Rodríguez-Pineda** (Guatemala) said that, while her Government was not opposed to the idea of a convention on diplomatic protection, it was of the opinion that the content of the draft articles required more thorough consideration. Diplomatic protection concerned a very delicate area of international relations where a foreign State's interest in protecting its nationals collided with the rights of the territorial sovereign. She therefore recommended the setting up of a working group within framework of the Sixth Committee to examine the text of the draft articles particularly with respect to the following aspects: State practice and its evolution in keeping with international case law; the interaction which should exist between diplomatic protection and the substantial progress which had been made towards the international protection of human rights; the exhaustion of local remedies and any exceptions to that rule, in particular denial of justice which, under the Salvadorian Constitution, did not occur simply because a court decision was contrary to the interests of the allegedly injured party; the discretion of the protector State and the need to make sure that political considerations did not influence any decision on whether or not to grant diplomatic protection which should be regarded as a legal and not a political act and, lastly, other forms of complementary action which might be pertinent when diplomatic protection was not feasible.

15. **Mr. Moreno** (Bolivarian Republic of Venezuela) acknowledged the efforts made to take into account the differences and overlaps between diplomatic protection and consular assistance and the requirement of continuous nationality from the date of injury to the date of the official presentation of the claim. He appreciated the distinction made between the legal status of corporations and that of their shareholders for the purposes of seeking diplomatic protection against internationally wrongful acts committed by a State and welcomed the inclusion in the draft articles of the rule of exhaustion of local remedies as a requirement for the exercise of diplomatic protection.

16. Draft article 1 attached excessive importance to nationality as a basic requirement for the exercise of diplomatic protection, thereby discriminating against stateless persons and refugees. For that reason, his delegation regretted the discarding of earlier proposed drafts that had included, in addition to nationals, the persons specified in draft article 8.

17. Similarly, it had reservations in regard to the content of draft article 19, which treated diplomatic protection not only as a right of the State, but also as its possible duty. The wording adopted was not usual in an instrument whose primary purpose was, by definition, to codify international custom or case law and doctrine as a peremptory norm. The mere inclusion of such a provision in a legal instrument diminished the status of custom as a source of law, since it clearly indicated which practice was considered desirable by the international community. The progressive

development of law would thus be diverted from its normal course by a legal rule laying down in advance a practice that would give rise to custom, regardless of what States actually did in that regard. The content of subparagraph (c) of that draft article was of concern in that connection, since, by being required to transfer to the injured person any compensation obtained, the State could be considered to be not acting in the higher interest of the nation. He quoted a ruling by the Permanent Court of Justice in the *Mavrommatis Palestine Concessions* case to the effect that by defending its own subjects, the State asserted its own right. Assuming that in exercising that right the State would not be acting solely on behalf of the individual but also in the national interest: it should be able to determine the use to be made of the compensation to benefit the nation and not a particular person.

18. **Mr. Ma** Xinmin (China) said that, since major differences existed among Member States as to the final form which should be taken by the draft articles on diplomatic protection, the General Assembly should not take an immediate decision, but should place the topic on the Sixth Committee's agenda triennially.

19. The provisions of draft article 6 might in practice lead to a situation where several States of nationality might exercise diplomatic protection successively on behalf of their national in respect of the same injury. As that would obviously be inappropriate, the draft articles should clearly specify that when one or several of the States of nationality of a person possessing dual or multiple nationality had already exercised diplomatic protection, the other State or States of nationality must not pursue diplomatic protection in regard of the same injury.

20. While agreeing with the principle established in draft article 14 that the exercise of diplomatic protection should be predicated on the exhaustion by the injured person of all local remedies in the State allegedly responsible for causing the injury, he was of the opinion that the State of nationality should not be prevented from taking the requisite diplomatic action in respect of an injury to its national, regardless of whether that person had exhausted local remedies. In that connection, he noted that diplomatic protection did not include other diplomatic action such as informal requests for corrective action, which did not entail the invocation of the legal responsibility of another State.

21. **Mr. Sandorski** (Poland) said that the draft articles did not provide sufficient elements of progressive development and codified customary rules in accordance with tradition. It might be considered questionable whether a State had an absolute right to decide whether or not to exercise diplomatic protection on its national's behalf and that, therefore, its nationals injured abroad had no right to such protection under international law. However, current developments in international human rights law, as reflected in a significant number of recently adopted national constitutions, required States to extend diplomatic protection to injured persons. By virtue, then, of State constitutional practice, the right to diplomatic protection had the character of international customary law, at least *in statu nascendi*. Moreover, his delegation considered that the right to communication with consuls was an important component of the right to diplomatic protection. Freedom of such communication was both essential to the exercise of consular functions and a fundamental guarantee of the human rights of aliens. It was therefore unacceptable that diplomatic protection should not be recognized as a human right and enforced as such, and that a distinction should be made between human rights and diplomatic protection.

22. Violation of the right to communication with consuls was particularly dangerous to the international legal order. Indeed, the right of a person deprived of freedom to be instantly informed about the possibility of being assisted by a consul was not only the right of an alien but formed part of the corpus of human rights, as recognized in a number of international judicial decisions and opinions. By the same token, the right to diplomatic protection also belonged to that corpus.

23. His delegation considered that the State of nationality had a legal duty to exercise diplomatic protection on behalf of an injured person upon request. Even without request, it was legally required to do so if the injury resulted from a grave breach by another State of *jus cogens* norms, notwithstanding that all States, and not just the State of nationality, were duty-bound to protect the individual in such cases. The State of nationality was often able to provide protection more swiftly and more efficiently than the international community. In any case, lack of a clear understanding of the meaning and scope of *jus cogens* should not prevent the International Law Commission from identifying peremptory norms of international law. Where there had been a grave breach of an obligation

of crucial importance for the fundamental interests of the international community, as in cases of torture and inhuman treatment, it could be contended, as it had been by the British Court of Appeal in the *Abbasi* case, that the State of nationality was legally bound to exercise diplomatic protection. In other than *jus cogens* cases, however, the State was under no obligation to exercise such protection if it would seriously endanger the overriding interests of the State. Should it decide for that reason not to exercise diplomatic protection, however, it should itself compensate for the damage suffered by its national.

24. His delegation considered that the draft articles were not yet ready to be given the form of a binding international instrument. The General Assembly should take note of them and commend them to the attention of Governments and postpone until a later date any decision on how next to proceed. In the meantime, States should continue to study them with a view to their being transformed into binding law, as and when appropriate.

25. **Mr. Alday** (Mexico) said that the work of the International Law Commission in the area of diplomatic protection accurately reflected the practice of States. Mexico concurred with the Commission's view that diplomatic protection was only one of various means of protecting the human rights and fundamental freedoms recognized under international law. For Mexico, safeguarding the rights of all Mexicans abroad was of the utmost importance, and diplomatic protection was therefore a central feature of its foreign policy.

26. His Government attached particular importance to the issue of exhaustion of local remedies. It was the duty of the State against which a claim was brought to show that local remedies had not been exhausted, and to specify which remedies remained open to the claimant.

27. As his delegation had said the previous year, Mexico supported the development of a convention on the basis of the draft articles. Such a convention would provide greater clarity and legal certainty and would help to harmonize the individual practice of States; it would also eliminate existing gaps and promote the updating of international law on the subject. His delegation believed that its preference for an international convention was justified by the tendency of States to minimize the value of "soft law", a mere declaration would not contribute sufficiently to the codification of international law on diplomatic protection.

28. Erroneous interpretations of the nature and scope of diplomatic protection had sometimes been used to justify wrongful acts, although the practice of States, reinforced by jurisprudence and doctrine, had brought greater clarity. Nevertheless, globalization made it more necessary than ever to ensure the existence of a legal order that established with total certainty the rights and duties of States with respect to their nationals abroad. The General Assembly should therefore take the necessary action to put in place a binding legal instrument that would codify and contribute to the progressive development of international law relating to diplomatic protection.

29. **Mr. Fitschen** (Germany) recalled that, in the Committee's discussion of diplomatic protection in 2006, his delegation had expressed the view that more in-depth discussion was needed before a decision was taken as to whether or not the draft articles could be adopted in the form of a convention. It was in that sense that he joined the current debate. He wished to underline once again that diplomatic protection was a right of States, not of individuals, and that it was a right, not a duty. Even where a State might, under its own constitution, have an obligation to exercise diplomatic protection in favour of a national, international law left that State a large margin of discretion as to how to do that. Any future codification of the law of diplomatic protection should not attempt to go beyond that well-established rule.

30. If the Committee opted to proceed with the drafting of a convention based on the draft articles, more thought should be given to the question of the genuine link between the individual and the State which had the right to exercise diplomatic protection. In the current globalized world, more and more people lived abroad for extended periods or moved repeatedly between countries. Under such circumstances, the initial link with their country of nationality might be weakened to the extent that it could no longer be considered genuine. Moreover, it was sometimes not easy to determine precisely which country might or might not exercise diplomatic protection for an individual in need. A future convention would need to take account of that feature of modern times. Lastly, if a convention were to be drawn up, draft article 19 would need to be revisited. A legally binding

convention had to be cast in terms of rights and obligations, rather than recommendations, if it was to serve its purpose.

31. **Mr. Omar** (Malaysia) noted that Malaysia had already expressed its support for the development of an international convention on the basis of the draft articles on diplomatic protection. That support was largely premised on his Government's constant commitment to ensuring that Malaysian nationals abroad were humanely treated and to upholding its right to protect its nationals from injuries suffered as a result of internationally wrongful acts of other States. That right was a sovereign prerogative of States, to be exercised entirely at their discretion.

32. Having had the opportunity to reflect on the mixed reactions of some Member States to the idea of a convention, Malaysia wished to reiterate its willingness to work with the international community in the noble effort to enhance legal clarity and predictability with respect to international law on diplomatic protection. Malaysia appreciated and understood the concerns of some States with regard to the manner and timing of drawing up a legally binding convention and emphasized the importance of taking into account the views of all States, particularly those in the developing world.

33. Malaysia aligned itself with the position taken by many Member States on the close connection between the draft articles on diplomatic protection and those on responsibility of States for internationally wrongful acts. Indeed, the drafting of articles on diplomatic protection had begun as part of the study on State responsibility and the two sets of articles would necessarily remain closely linked. Therefore, the question of developing an international convention on diplomatic protection should be considered in tandem with that of developing a convention on State responsibility.

34. Malaysia noted with concern the provision of draft article 8 regarding the right of a State to afford diplomatic protection to stateless persons and refugees. Malaysia was not a party to any treaty relating to stateless persons and refugees and therefore was not bound to accord anyone such status. Further, Malaysia did not have specific national legislation concerning refugees, who were dealt with in accordance with the country's immigration laws.

35. The text of the draft articles on diplomatic protection had been made available to Member States fairly recently, and many States had therefore probably not had sufficient time to consider them thoroughly. Malaysia concurred with the view that a period of further reflection on the draft articles should be allowed before the question of developing a convention was taken up.

36. **Mr. Bühler** (Austria) said that his Government's position on the question of a convention on diplomatic protection remained unchanged: Austria was not convinced of the usefulness of embarking immediately on the development of a convention. States needed to have sufficient time to reflect on the draft articles. Austria would therefore prefer to defer further discussion of whether to draft a convention and how to do so (e.g., by establishing an ad hoc or preparatory committee or by convening a codification conference) for a few years.

37. **Ms. Naidu** (South Africa) said that South Africa welcomed the finalization of the draft articles on diplomatic protection but was concerned that their scope went beyond the codification of existing international law and beyond the protection that States were willing or able to offer — particularly draft article 19, which created a legal right to diplomatic protection. Nevertheless, her delegation favoured the negotiation of a convention on the basis of the draft articles and hoped that work towards that end would proceed during the current session.

38. **Mr. Mikanagi** (Japan) said that his delegation welcomed the draft articles on diplomatic protection as a useful document which reflected customary international law on the subject. While some of the draft articles included provisions that might further progressive development of the law, others seemed premature. In particular, draft articles 8 and 19 did not seem consistent with customary international law. The International Court of Justice had made reference to the draft articles in its judgment on the preliminary objections in the case concerning Ahmadou Sadio Diallo, which could be interpreted as a sign of positive recognition. However, at the current stage it was not clear how useful the articles would be as guidelines for the practice of States and others involved in the exercise of diplomatic protection. Japan therefore considered it premature to consider drafting a convention. As others had suggested, five years might be an appropriate time for reflection, which would

mean that the Committee would discuss the issue again in 2012.

39. Mr. Rodger **Young** (United States of America) said the International Law Commission need take no further action on the topic of diplomatic protection. The United States welcomed the Commission's efforts to revise the draft articles so that they more accurately reflected customary international law and to clarify their contribution to progressive development of the law. It also welcomed the Commission's efforts to clarify that diplomatic protection was a sovereign prerogative of States and an important component of bilateral diplomacy.

40. His delegation was concerned, however, that the draft articles on a few topics, including continuous nationality, extinct corporations, the protection of shareholders, and recommended practice (draft article 19), deviated from customary international law without a sufficient public policy rationale. For that reason, and because there was a large body of well-established State practice pertaining to those issues, the United States would be opposed to any effort to move towards a diplomatic conference leading to the adoption of a convention on diplomatic protection. His Government, like others, feared that the negotiation of a convention could undermine the Commission's substantial work to date by reopening topics on which States had agreed, raising the risk that a significant number of States might not ratify a convention. The United States would, however, support the adoption by the General Assembly of a resolution taking note of the draft articles and attaching them, as had been done previously with the Commission's work on the draft articles on State responsibility for internationally wrongful acts.

41. **Mr. Muchemi** (Kenya) said that his delegation supported the recommendation that the General Assembly should draw up a convention on the basis of the draft articles on diplomatic protection. The adoption of such an instrument would codify customary practices, promote legal clarity on the applicable rules and promote the progressive development of international law on the subject. The General Assembly should therefore remain seized of the matter in order to sustain the necessary momentum towards the conclusion of a convention.

42. **Mr. Böhlke** (Brazil) said that the draft articles on diplomatic protection reflected international practice and represented another step in the codification of customary international law. The draft articles strengthened protection for refugees and stateless persons, but some aspects still remain to be addressed. For example, the distinction between diplomatic protection and consular assistance should be clarified. In addition, although draft article 7 marked positive progress in clarifying the issue of multiple nationality, more specific criteria for the exercise of diplomatic protection by more than one State might be needed. The concept of predominant nationality should also be more clearly defined and its relationship to the concept of effective nationality should be better explained. His delegation also had concerns about draft article 19, on recommended practice. Provided that its various concerns were addressed, Brazil agreed with the recommendation by the International Law Commission that a convention should be drawn up on the basis of the draft articles and was of the opinion that doing so would be a valuable exercise in addressing existing gaps in international law and would promote its updating.

43. **Ms. Telalian** (Greece) said that Greece had always supported codification of the rules on diplomatic protection and reiterated her delegation's gratitude to the International Law Commission for its excellent work on the draft articles. The views expressed and the comments made by States thereon related more to issues of formulation and litigation than to codification. Greece had raised some concerns regarding three key issues: nationality of claims, exhaustion of local remedies and diplomatic protection of a ship's crew by the flag State. However, those concerns did not raise any major objections of principle, nor did they in any way entail any general reservation regarding the draft articles. On the contrary, Greece believed that the rules on diplomatic protection were ripe for inclusion in the body of international law.

44. A convention incorporating the draft articles on diplomatic protection, together with a legally binding text based on the draft articles on State responsibility for internationally wrongful acts, would provide the clarity, the precision and the binding nature necessary for uniform application and interpretation of the draft articles at the international level. Greece was not in agreement with the view that the draft articles should take the form of an annex to a General Assembly resolution, as that would leave too much leeway for

State practice to deviate from the articles, thereby indirectly introducing uncertainty in the content thereof. Her delegation believed that the best way for the draft articles to acquire treaty status would be to convene an international diplomatic conference under the auspices of the United Nations.

45. **Mr. Kuzmin** (Russian Federation) said that the draft articles on diplomatic protection presented by the International Law Commission successfully combined codification with progressive development and therefore provided a satisfactory answer to a whole series of issues. The draft articles on diplomatic protection were of significance in their own right and their fate should not be linked with that of the draft articles on the responsibility of States for internationally wrongful acts.

46. He commended the manner in which the definition and scope of diplomatic protection had been formulated in draft article 1. The reference to the fact that diplomatic protection consisted of the invocation by a State of international legal responsibility was important, because it formed the logical basis for the proposed solutions regarding the nationality of the claim and the exhaustion of local remedies.

47. The Commission had been right to explain the difference between diplomatic protection and consular assistance in the commentaries (A/61/10) rather than the draft articles themselves. The Commission had also adopted the correct approach when it had laid down the principle of the continuous nationality of a natural person or corporation between the date of the injury and the date of the official presentation of the claim (draft articles 5 and 10). Those time limits were of significance for determining the receivability of claims submitted within the context of the exercise of diplomatic protection, insofar as they guaranteed that diplomatic protection would not be exercised in cases where persons had acquired the citizenship or nationality of the respondent State after presentation of the claim to the latter.

48. Draft article 9 was judiciously worded; the fact that a State had to meet certain "cumulative criteria" in order to qualify as the State of nationality of a corporation would make it possible to avoid situations in which several States could assert that they were entitled to exercise diplomatic protection in respect of the same corporation.

49. Nevertheless, his Government had doubts about the formulation of some provisions of the draft articles, such as draft article 15, paragraph (a), concerning exceptions to the local remedies rule. Although it recognized that the drafting of that provision had been improved, it was still sceptical about what it regarded as the lowering of the threshold for the application of the rule.

50. The phrasing of draft article 11, paragraph (a), concerning the protection of shareholders was questionable and could give rise to abuse. Draft article 13 on the diplomatic protection of legal persons other than corporations was likewise a source of concern. It would be better to abstain from their inclusion within the scope of the draft articles, because current international practice did not reveal the existence of any customary rules in that sphere and progressive development in that connection would be premature.

51. Although, like the product of any compromise, the draft articles might have shortcomings from the viewpoint of some countries, they were balanced and suitable for adoption as a convention.

52. **Mr. Wickremasinghe** (United Kingdom) said that it was evident from the commentaries to the draft articles that diplomatic protection was a long-established area of international law and that there was a large body of State practice on much of the subject matter covered by the draft articles. The topic had remained largely uncodified, however.

53. The United Kingdom had noted the recommendation of the International Law Commission that Governments should move towards the adoption of a convention based on the draft articles, but it would prefer, for various reasons, that Member States pause for a period of reflection before making any decision about the negotiation of such a convention. The draft articles were still relatively new, and Governments had not had sufficient time to undertake the necessary extensive study and consultation on the text and commentaries. Further, there were important elements of the draft articles that constituted proposals for the development of new law, and while the United Kingdom might be willing to accept some of those proposals, it was not so comfortable with others. In particular, his Government had concerns about draft article 19, entitled "Recommended practice", the inclusion of which risked undermining well-established rules of customary international law. For those reasons,

the United Kingdom considered that Governments needed further time to become familiar with the draft articles before deciding on any future action.

54. In addition, as had been pointed out by the Special Rapporteur on diplomatic protection, the fate of the draft articles was closely bound up with that of the draft articles on State responsibility. The United Kingdom therefore believed that until a decision was made about drafting a convention on State responsibility, a decision to draw up a convention on diplomatic protection would be premature. Moreover, the relative novelty of the draft articles on diplomatic protection meant that they had not been put to the test of actual application, and postponing a decision would permit them to be consolidated and refined through their application in State practice and by international courts and tribunals.

55. **Ms. Chadha** (India) recalled that India had already expressed its views on the substantive aspects of the draft articles in earlier discussions and, like other delegations, had some concerns about draft articles 8 and 19. However, her delegation believed that several of the draft articles constituted codification of customary international law and that their adoption in a convention on diplomatic protection would provide legal certainty. Accordingly, India supported the recommendation of the International Law Commission to draft a convention.

56. **Mr. Hamaneh** (Islamic Republic of Iran) said that, while recognizing the merits of the draft articles, his delegation did not for the time being consider it advisable to use them as a basis for the elaboration of a convention, particularly since they contained many elements that constituted a progressive development of international law and were therefore a source of divergent opinions among States. Moreover, the relationship between the topic of diplomatic protection and that of State responsibility should be duly taken into account in any decision as to the final form of the draft articles and diplomatic protection, since there was no agreement on the adoption of a convention on the responsibility of States for internationally wrongful acts.

57. His delegation agreed with the content of draft article 2, which clearly reflected customary international law and international jurisprudence: it was a discretionary right of States to decide whether or not to exercise diplomatic protection. States also had the right, as stated in the commentary to draft article 4, to determine who their nationals were. Draft article 5, paragraph 2, which allowed for the possibility of such protection being exercised by a State in respect of a person who was a national at the date of the official presentation of the claim but not at the time of injury, did not properly address the concern raised about "nationality shopping". Determination of predominant nationality was subjective; draft article 7 was not based on customary international law, which recognized the role of the non-opposability of diplomatic protection against a State in respect of its own nationals. That draft article therefore represented a premature step in the progressive development of international law.

58. The opinion expressed by the International Law Commission that the awards of the Iran-United States Claims Tribunal demonstrated an evolution in international law regarding diplomatic protection was not shared by his delegation. Most of its awards on the question of dual nationality concerned the law of treaties and interpretation of the Algerian Declaration signed by the Governments in 1981 rather than diplomatic protection; most of the disputes brought before it involved a private party on one side and a Government or Government-controlled entity on the other and concerned primarily issues of municipal law and general principles of law.

59. As for extending diplomatic protection to corporations, covered in chapter III of the draft articles, that was unnecessary as their activities and disputes were largely regulated by bilateral and multilateral treaties between States. Lastly, there was a risk that the local remedies rule would be jeopardized by the formulation of exceptions in draft article 15, particularly its subparagraph (b): slow-moving proceedings were not ipso facto a ground for exception to that rule.

60. **Ms. Gómez** (Ecuador) said that her Government supported the Commission's recommendation that a convention should be drafted on the basis of the draft articles on diplomatic protection. Diplomatic protection was a valuable means of promoting respect for the rights of individuals and entities from other States. Moreover, it was important to be able to apply the diplomatic protection regime to refugees and stateless persons. A convention based on the draft articles would contribute to the codification of international law in that area.

Agenda item 158: Observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa in the General Assembly (A/62/141 and A/C.6/62/L.2)

61. **Mr. Muchemi** (Kenya), introducing draft resolution A/C.6/62/L.2 concerning observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa in the General Assembly, said that, in addition to the sponsors listed in the draft resolution, Costa Rica, Mali, Namibia and Nigeria had also become sponsors. He drew attention to the information contained in the explanatory memorandum in annex I to document A/62/141. In addition to the member States of the Centre listed in that document, Somalia was now also a member.

62. **Mr. Kanu** (Sierra Leone) said that his delegation also wished to become a sponsor of the draft resolution. His country had experienced the devastating effects of small arms and light weapons during almost 11 years of civil war. The draft resolution was significant not only for the Great Lakes Region but for the whole of Africa. He therefore urged delegations to support it.

63. **Mr. Muhumuza** (Uganda) said that the availability of small arms and light weapons had a serious impact on the economic and social situation of the population in affected countries. The title of the draft resolution should read "Observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States in the General Assembly".

64. **Mr. Moeletsi** (Lesotho) said that his delegation also wished to become a sponsor of the draft resolution.

65. **Ms. Nworgu** (Nigeria) said that West African countries, too, had been grappling with the problem of small arms and light weapons for some time; indeed, the problem affected not just Africa but most parts of the world. Her delegation therefore supported the draft resolution and called on others to do so.

Agenda item 159: Observer status for the Italian-Latin American Institute in the General Assembly (A/62/143 and A/C.6/62/L.5)

66. **Mr. Spatafora** (Italy) introduced draft resolution A/C.6/62/L.5 concerning observer status for the Italian-Latin American Institute in the General Assembly and drew attention to the information contained in the explanatory memorandum in annex I to document A/62/143. Ministers and Government officials from the member States of the Institute had paid tribute to its work at the third National Conference on Italy-Latin America and the Caribbean, held recently in Rome.

Agenda item 160: Observer status for the Energy Charter Conference in the General Assembly (A/62/191; A/C.6/62/L.3 and Corr.1)

67. **Mr. Miyajima** (Japan), introducing draft resolution A/C.6/62/L.3 and Corr.1 concerning observer status for the Energy Charter Conference in the General Assembly, said that, in addition to the sponsors listed in the draft resolution, Albania, Austria, Bulgaria, the Czech Republic, Ireland, Kyrgyzstan, Latvia, the Netherlands, Portugal, the Russian Federation and Sweden had also become sponsors. He drew attention to the information contained in the explanatory memorandum in annex I to document A/62/191.

Agenda item 162: Observer status for the Eurasian Development Bank in the General Assembly (A/62/194 and A/C.6/62/L.4)

68. **Mr. Sadykov** (Kazakhstan) introduced draft resolution A/C.6/62/L.4 concerning observer status for the Eurasian Development Bank in the General Assembly and drew attention to the information contained in the explanatory memorandum in annex I to document A/62/194. It was expected that, by the end of 2010, the value of the Bank's investment portfolio would exceed $4.5 billion and that the value of its assets would reach $5.5 billion.

The meeting rose at 12.05 p.m.